

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4360 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J G DHEBAR

Versus

CHAIRMAN

Appearance:

MR. P.C. MASTER, ADVOCATE, FOR M/S NJ MEHTA ASSO.
for Petitioner

MR. V.M. PATEL FOR MR KS NANAVATI for Respondents.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 26/12/96

ORAL JUDGEMENT

The petitioner seeks a direction on the respondents to treat him promoted to the grade of Executive Engineer with effect from 7.10.1973 by according to him the benefits of nine year rule with effect from 7.10.1973 and to pay him the difference in salary and other consequential benefits on that basis.

2. The petitioner joined services as Deputy Engineer on 7.10.1964 with the Gujarat Electricity Board. As per the General Standing Order No. 253 issued on 26.12.1973 it was decided that an employee who has completed nine years of service in the same cadre in a particular pay scale and who did not get promotion for no fault of his own on 1.8.1972 or who may complete nine years service in the same cadre in a particular pay scale after 1.8.1972 shall be entitled to the promotion to next higher pay scale from 1.8.1972 or from the date following the date on which he completes nine years service in the same cadre and his pay shall be fixed in that grade irrespective of the fact whether suitable vacancies in the next higher post are available or not. This decision was subject to the employee otherwise being fit for promotion on the basis of his overall performance and the requirement that he should have passed necessary examinations as per the rules of the Board. This was also subject to the further rider that the case of persons who have been awarded punishment shall be considered after the punishment period is over and in case of those who are reverted to a lower post, they are to be considered after completion of two years from the date of reversion. According to the petitioner he was entitled to the benefit of the said Resolution from 7.10.1973. It is stated on oath that his service record for the whole of nine years was completely satisfactory. However, charge-sheet dated 15.3.1973 was issued to him along with other officers namely, Mr. P.S. Chauhan the then Executive Engineer, Mr. A.M. Jhala the then Deputy Engineer and Mr. P.D. Mehta the then Deputy Engineer. The charges levelled against the petitioner, Mr. Jhala and Mr. Mehta were similar. Mr. Chauhan was suspended during the enquiry and as a result of the enquiry he was reverted from the post of Executive Engineer (Selection Grade) to that of Executive Engineer and was not considered for promotion for two years from the date of his suspension. The only charge that was proved against the petitioner was "causing damage to the property of the Board where it was reasonably possible to prevent damage to the Board's property". The petitioner was punished by imposing penalty of stoppage of two increments with a cumulative effect. That order was made on 22.2.1974 as per Annexure-D to the petition. It is stated that though higher punishments were imposed on the said other officers, they were given the benefit of nine year rule from their due dates but the petitioner has been single out and was granted nine year rule benefit only from 1.1.1979 and later because of his representation from 1.4.1976 instead of granting him the benefit from 7.10.1973. According to the petitioner Mr. P.D. Mehta

who was punished along with him and that too during the period of nine years, he was accorded benefit of nine year rule from the due date. There is no affidavit-in-reply filed by the respondents and the averments made in the petition are therefore not controverted.

From the record it transpires that Mr. P.D. Mehta who was charge-sheeted along with the petitioner was also imposed punishment, but, he was given the benefits of nine year rule from his due date. In the same manner Mr. P.S. Chauhan and Mr. Jhala who were also punished as a result of the departmental inquiry and whose punishment was more stringent than that of the petitioner were also given the benefit of nine year rule from their due dates. The authorities had revised the benefit given to the petitioner by making it effective from 1.4.1976 instead of 1.1.1979 which they have ordered on 19.10.1979. That order of partial modification is at Annexure-L. It does not record any reason as to why the petitioner was not granted the said benefit from his due date i.e. 7.10.1973. The said order dated 30.7.1985 refers to the decision of this court in Special Civil Application No. 530 of 1981 and cognate matters wherein criteria was laid down for review of cases of grant of nine year rule benefit. As per the said decision, overall performance of an officer for nine years prior to the due date of consideration was required to be taken into account and the adverse remarks of three years prior to the due date of consideration, if not communicated, were to be treated as stale and belated. It was laid down that confidential reports subsequent to the due date of consideration cannot be taken into account. There is nothing in the order made by the competent authority to indicate that the confidential reports of the petitioner for the relevant periods were not satisfactory. From the record, it appears that there was no justifiable reason to treat the petitioner differently from the other officers who were given the benefit of nine year rule from their due dates even though they were involved for a similar departmental action and were imposed more stringent punishment than the petitioner.

Under these circumstances, the petitioner should be given the benefits of G.S.O. No. 253 dated 26.12.1973 from his due date i.e. on his completion of nine years services. The respondents will, therefore, pass necessary orders granting him the benefits of the said Resolution from his due date. Rule is made absolute accordingly with no order as to costs.

